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MORAL SUASION OF ACTS IN CONCERT AS COMING UNDER THE ANTI-TRUST ACT.

The oft-repeated assertion that an agreement for a number of men not to work for a particular employer is lawful, because each man may refuse to work for him, seems directly opposed to the principle laid down in a recent decision by the Supreme Court. Eastern States Retail Lumber Dealers' Asso. v. United States, 34 Sup. Ct. 951.

In this case, various associations of retail lumber dealers in several states were charged with conspiring to prevent wholesale dealers from selling directly to consumers of lumber. Their method was to report to their secretary in New York the names of wholesalers making sales to consumers and these names were embraced in a printed report sent out by the secretary to retail dealers composing the association, the object being to create "a natural tendency to cause retailers receiving these reports to withhold patronage from listed concerns," this being the object as stated by the counsel for the retailers in the suit. The Supreme Court adopts this as a statement in the way of admission and decides the case thereon.

The court alludes to the "rule of reason" doctrine in its confinement to "combinations unduly restrictive of the flow of commerce or unduly restrictive of competition" and holds the combination violative of the anti-trust act.

It was said as to proof of a combination or conspiracy, that: "It is said that in order to show a combination or conspiracy within the Sherman Act, some agreement must be shown under which the concerted action is taken. It is elementary, however, that conspiracies are seldom capable of proof by direct testimony, and may be inferred from the things actually done; and when, as in this case, by concerted action the names of wholesalers who were reported as having made sales to consumers were periodically reported to the other members of the association, the conspiracy, to accomplish that which was the natural consequence of such action, may be readily inferred."

Then the court goes on to say what this "natural consequence" was, as follows: "The circulation of these reports not only tends to directly restrain the freedom of commerce by preventing the listed dealers from entering into competition with retailers, but it directly tends to prevent other retailers who have no personal grievance against him and with whom he might trade, from so doing, they being deterred solely because of the influence of the report circulated among the members of the association. In other words, the trade of the wholesaler with strangers was directly affected, not because of any supposed wrong which he had done to them, but because of the grievance of a member of one of the associations, who had reported a wrong to himself, which grievance when brought to the attention of others, it was hoped would deter them from dealing with the offending party."

We have thus detailed, at some length, what the Supreme Court says, to show that there was a sort of moral suasion, uncompelled by any threat of fine or expulsion arising out of the practice which the court condemned as violative of the anti-trust act.

To the claim that the retail trade needed to be protected the court said: "The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and

private choice of means must yield to the national authority thus exerted."

Thus, we think we have presented in the words of the court about everything that might be claimed in favor of individual acts harmless in themselves used in concerted action to effect a desired result and this brings us to the proposition laid down at the beginning of this editorial.

As affecting that proposition, we quote the court as saying: "A retail dealer has the unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself, and may do so because he thinks such dealer is acting unfairly in trying to undermine his trade. 'But,' as was said by Mr. Justice Lurton, speaking for the court in Grenada Lumber Co. v. Mississippi, 217 U. S. 433, 'when the plaintiffs in error combine and agree that no one of them will trade with any producer or wholesaler who shall sell to a customer within the trade range of any of them, quite another case is presented. An act harmless when done by one may become a public wrong when done by many acting in concert, for it then takes on the form of a conspiracy.' * * * When the retailer goes beyond his personal right * * * * he exceeds his lawful rights, and such action brings him and those acting with him within the condemnation of the act of Congress."

There hardly may be more definitely expressed the principle that black lists, or unfair trade lists, insofar at least as they may affect interstate trade, are illegal, and generally speaking, we do not see how these things may be differentiated under state anti-trust laws.

This principle may have been held in the labor case of Loewe v. Lawlor, 208 U. S. 274, though the compulsory restraint upon labor unions might have brought on the judgment that was rendered in that case. Here, however, we are advised, that moral suasion is sufficient proof of illegality, if its natural tendency is to interfere with anothers' right to free competition, each man in the market being free to deal with him or not. This case amply proves that capital, as to the principle decided, stands not one whit better than may labor as to its blacklists, the question being, how are those lists brought about and what is their purpose and natural tendency?

NOTES OF IMPORTANT DECISIONS

LIBEL AND SLANDER—RACIAL PREJUDICE.—About eight months ago this journal made a comment on the case of Morris v. State, 160 S. W. 387, decided by Arkansas Supreme Court, and now our contemporary, National Corporation Reporter, makes a belated criticism upon this comment, speaking of it as sophistical. We are glad to see that in this day of rapidly rushing events our comment has survived so long as to merit notice, but object to a garbled extract therefrom forming the basis of criticism.

This is the language criticised: "It easily may be thought that judicial cognizance might be taken of sociological conditions and the prevalent view in a country of the negro being an inferior race so that to charge a white man with being such would be to attach to him a sort of presumption of inferiority in name or character, but to cite as proof statutes regarding segregation of races and prohibition of intermarriage between them seems to us beside the mark."

Turning to 78 Cent. L. J. 74, we find these words as part of a paragraph, the rest of which reads as follows: "These statutes are constitutional only from the standpoint of the state's police power in the conserving of its peace, and the recognition, as plausible at least, of a theory that miscegenation would produce inferior offspring. It is not necessary to say or think that these statutes regard the negro as inferior, and, indeed they are forbidden to proceed on this theory."

Our contemporary, ignoring the reason of our view that our constitution regards all men as free and equal, seems to us to contend that statute law may declare one race inferior to another, when generally as we understand the principle of segregation laws being constitutional, it is that the child of miscegenation of dissimilar races is the beginning of decadence. In addition there is widespread prejudice of which the police power takes notice, but it is unnecessary for the court to say on which side this prejudice lies.

We care not very greatly about this, but hope our contemporary will in the future represent us according to context and not by disjointed sentences.

We proceeded further in our comment to contend that: "Some white man would not deem himself injured by such a charge (having negro blood in his veins) for we have often heard that it has been said to negroes that they are as good as whites." We argued that any one speaking this way could not be humiliated or feel himself disgraced, if he really believed in what he was preaching. Our contemporary ignored, also, this view by us.

FEDERAL EMPLOYERS' LIABILITY ACT —CASUAL DUTY AS CONSTITUTING EMPLOYMENT IN INTERSTATE COMMERCE. —The case of Gaines v. Detroit G. H. & M. Ry. Co., 144 N. W. 397, decided by Michigan Supreme Court, shows that an employee of an interstate railroad, in its yards, was injured while assisting in repairing a draw bar of an interstate railroad car, that upon, which was the draw bar, being on its return trip from bringing coal into a state placed in the intrastate railroad's yards for repair. It also appeared the car had been hauled by the intrastate carrier from one point in the state to another in the state where the repairs were being made.

There were two counts in the suit against the intrastate road, one at common law and the other upon the statute, and the trial court allowed recovery upon the former. It was contended by defendant that the only recovery that could be had must be under the federal act, but it does not appear that it was contended that it could not be had under this act by reason of being only an intrastate carrier. The Supreme Court in reversing the judgment upon the common law count sends the case back for retrial according to defendant's contention.

This result seems to us to involve the following conclusions: (1) an intrastate carrier may be sued under the federal act; (2) though an interstate car may become defective while being used by an intrastate carrier, its repair is employment in interstate commerce; (3) and this though it devolves upon the intrastate carrier to repair the car becoming defective while in its service.

It seems to us to be going quite a length to hold an intrastate carrier liable to suit under the federal act, when the statute merely means to grant recoveries against interstate carriers. No jurisdiction over other carriers seems to be given to courts under the act, though conceivably it may be possible for Congress specifically to declare that for injury to an employee engaged in the repair of an instrumentality of interstate commerce in the possession of any one ordering its repair an action may lie. This possession need not under such a declaration be held by a carrier, for an intrastate carrier would be the same as any other bailee.

It is going, though, still further to hold that a defective instrumentality of commerce removed to the custody of an intrastate bailee, whether carrier or not, is there to be treated as in interstate commerce, when without the existence of the federal acts, its repair would be in ordinary service for the master directing the repairs. It would seem, that the test of what the service is would be for whom it is performed, and not upon what it is performed. The latter test ought to involve only the interstate carrier and make of the intrastate bailee its agent in causing the repairs to be made.

This case in other respects accords with ruling in Wabash R. Co. v. Hayes, 34 Sup. Ct. 729, which shows a case under federal law and a recovery under state law, and it was said that there could be counts under federal and state law. Supreme Court appears to send this case back for amendment of petition by adding a count under the federal act. There ought to be flexibility enough in practice for the amendment to have been directed and the verdict to stand, provided the measure of damages is the same under state as under federal law. See 79 Cent. L. J. 37.

RIPARIAN RIGHTS—ESTOPPEL AGAINST USE OF WATER FOR NON-RIPARIAN PURPOSES.—By a divided court the Supreme Court of Michigan affirms a decree in favor of a city against allowing a riparian owner to pollute its water supply by bathing in a lake which is the source of supply. City of Battle Creek v. Goguae Resort Assn., 148 N. W. 144.

The part of the court that held against the city placed its decision upon the ground that one riparian owner desiring to use the water of the lake for selling it to inhabitants of a city cannot enjoin another from using it for purposes that do not interfere with domestic, agricultural or mechanical purposes.

The other part of the court, showing first, that the use the city wishes to make of the water is freed by its letting other water into the lake from diminishing the supply, is considered not harmful to the ordinary rights of a riparian owner, and then appeal is made to the fact that both parties trace title to a common source from which an estoppel arises.

The estoppel is claimed to exist in the fact that the city bought prior to purchase by the defendant for the purpose of obtaining its drinking water from the lake. The defendant is alleged to have bought "with constructive knowledge that the city had bought from its grantor, and with active knowledge of the fact that the city was then taking its supply of drinking water from the lake by means of its plant, plainly visible." This part of the court says that: "No person has a property right in water. The right is usufructuary only and the modern authorities all tend to establish the principle that one riparian owner may not restrain the use of water by another riparian owner for non-riparian purposes, unless such use results in injury to the first."

But here there was no question of enjoining the city, but only of the city, that was using the water to sell, enjoining another who was not injuring any person using it for riparian purposes. By estoppel a non-riparian purpose is elevated to the dignity of a riparian purpose. Of course, it is assumed that the common grantor was the sole owner of all the riparian lands and the ruling seems to extend the principle of estoppel quite far, giving, in effect, to the original riparian owner something which the opinion expressly denies he possessed, to-wit: "A property right in water." But, after all, if he was the sole riparian owner why should he not have a property right in the water?

RECENT DECISIONS IN THE BRITISH COURTS.

One of the provisions of the companies' (consolidation) act is that when a company is being wound up for the purpose of transferring its business to another company, any "member" of the company who has not voted in favor of the transference scheme has a right to intimate his dissent to the liquidator, and require him either to abstain from carrying the arrangement into effect, or to purchase the member's interest at a price to be fixed, failing agreement, by arbitration. It has been clearly decided that this statutory right is one of which the member cannot be deprived by any provision in the constitution of the company. Any clause purporting to deprive a shareholder of this right would at once be set aside as ultra vires. A further interesting point relating to the same matter has lately been settled. The question was raised whether the right of dissent could be exercised by the executors of a deceased shareholder, whose names, be it noted, were not on the register of the company as owners of the shares. It has been held that the term "member" (of a company) must include the estate of a deceased member, and accordingly that the executors as representing the estate were entitled to dissent from the resolutions, which had been passed to carry out the proposed sale of the business of the company.

The understanding is that brokers, engineers, solicitors and others concerned as officials in the flotation of a company consent to their names appearing on the prospectus simply as occupying the respective positions attributed to them, of course the appearance of names of repute goes far to assist in stamping an issue as reputable, but it does not follow that those who thus honestly lend their names incur liability as authorizing the issue. Yet in a recent case in which the prospectus of a company was impeached, a determined attempt was made to attach liability to the brokers whose names appeared on it as being "persons who authorized the issue of the prospectus" within the meaning of the companies act. In the result, it was left to the jury to determine as a question of fact whether in the light of all the circumstances, the brokers had authorized the prospectus; and an answer was returned in the negative.

The next case we notice is one of great interest to bankers as bearing upon their rights and obligations with regard to cheques signed "Per pro." According to the British Bills of Exchange Act, a signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is not bound if the agent in so signing acts beyond the actual limits of his authority. The facts of the case were, briefly, as follows: In 1888 one Morrison who carried on business in London as an insurance broker in the name of Bruce, Morrison & Co., gave his bankers, The National Provincial Bank, written authority to pay and honor all cheques drawn by Abbott, his manager, per procuration of himself. In 1907 Abbott opened a private account with the London County & Westminster Bank into which he paid inter alia from time to time cheques drawn on the National Provincial Bank by him "per pro" Morrison, and payable to himself. The cheques were crossed specially to the London County & Westminster Bank. In 1908 Morrison, suspecting in a general way that Abbott had been defrauding him, employed an accountant to investigate matters and as a result had these suspicions confirmed. He, however, accepted an explanation given by

Abbott and allowed him to continue in his employment, binding him not to incur any liabilities except with his principal's sanction and except in the ordinary course of the firm's business. The accountant—if he himself knew of it—did not make Morrison aware of the existence of Abbott's private account, but when Morrison knew of it, he raised action against the London County & Westminster Bank to recover the amount of the cheques wrongfully paid by Abbott into his account with them. He succeeded in the Divisional Court, but that decision was reversed by the Court of Appeals. In the court below, Mr. Justice Coleridge held the view that the bare fact that the cheques were signed "per pro" imposed on the defendants the duty of inquiring whether Abbott was acting within the terms of his authority, and had they inquired, they would necessarily have gone to Morrison; whereas, their neglect of inquiry at the outset prevented him nipping the fraud in the bud. But the court of appeal held that once the cheques had been discharged by payment there was no liability on the defendant bank to repay. In their view, he who takes a negotiable instrument signed "per pro" has notice that when he comes to present it for payment, he may fail to get payment because the limited authority of the agent has been exceeded, and therefore the position of a banker who, as in this case, collects a cheque upon another bank signed "per pro" is that if he presents the cheque and gets payment, and it turns out afterwards that the agent has exceeded or abused his authority, he (the collecting banker) is not liable to the principal, who will have to seek his remedy elsewhere.

If a creditor accepts payment in full of his debt, after he has raised action for recovery of it, does he thereby waive his claim for the costs of suing for it? That was the question involved in a recent case, and curiously enough no authoritative answer by reference to decisions could be given. The judge before whom the matter came, after discussing the pros and cons in a lengthy judgment arrived at the following conclusion, which we consider to be a good working solution: "I think that when the creditor unreservedly accepts a slump payment of less than the sum sued for, there is a presumption that he intended to settle all claims including costs, but when the creditor receives payment of the full amount of his overdue debt, there is no such presumption. It is for the debtor to see that he gets a discharge of the action as well as of the debt, for an action once raised subsists for the purpose of disposing of all its conclusions including the conclusion for costs. The action is not withdrawn by the mere acceptance of the sum sued for."

We make in conclusion a practical point of local government administrative law. Can a county council who has the duty of regulating the water supply of a certain area, charge a water rate in that area though they are not yet ready to supply water to the consumers? It has been held they can. That finding was arrived at on two considerations—first, the statutes governing the local authority in question gave them express power to levy a rate, and second they did not make the rating contingent on first supplying the consumers in the area.

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IS FEDERAL LEGISLATION NEEDED TO MEET THE DEFECTS IN THE ADMINISTRATION OF THE WORKMEN'S COMPENSATION LAWS?

In this day of Legislative reforms, we often hear discussed the necessity and advisability of a Federal Workmen's Compensation Act. The advocates of such a measure apparently assume without question the power of Congress to pass such an act without violating any constitutional provision.

The merits of legislation of this character, if its provisions could be enforced according to its spirit and intent, will be conceded by all fair-minded men who have given the subject a moment's consideration. It insures to the unfortunate employe, when misfortune has overtaken him, some compensation, at least. It makes certain what is otherwise conjectural and uncertain in many, if not every case. It increases and multiplies the cases in which the employer is required to pay, but it materially decreases the maximum amount for which he may be liable in practically every case.

However desirable and equitable the theory of this legislation may seem and, in fact, be, it is common knowledge that state statutes upon the subject of compensation for injured employes, so far as their practical application is concerned, are still in their

experimental stage. Many states now have upon their statute books acts providing for compulsory or semi-voluntary compensation for employes who are injured in the course of their employment, but notwithstanding the fact that such statutes are designated to create a closer relation between the employer and employe and to eliminate litigation and avoid delay, we must admit that the practical operation of such statutes has been far from the ideals sought and intended, and, in the main, unsatisfactory to the employer and a disappointment to the employe as well.

Employers who have not been in accord with this class of legislation have diligently sought and unfortunately found, in the untried provisions and apparent omissions of such statutes, many ways not to prevent but to increase and augment unnecessary and vexatious delays, and instead of accomplishing their prime and laudable purpose, they have been used by some as a means and a pretext to incur and prolong litigation, and to precipitate, promote and well nigh perpetuate delays. Such employers have contributed more to the oppression of business, radical legislation and discord among the body politic than all other forces combined.

If an optional compensation act is passed such as is in force in Illinois, such an employer will refuse to accept and be bound by its provisions, and refuse to pay the compensation therein provided until others have demonstrated that the employer can more successfully and completely defeat the injured employe in the assertion of his rights by the outward acceptance of the act than by the refusal to accept its provisions. When this has been demonstrated, this class of employers will then outwardly and technically accept the provisions of the act for the sole purpose of preying upon the injured and defenseless employe.

If an employe is injured under circumstances, which, outside of the compensation act, would render the employer legally liable to pay, perhaps, many times the maximum amount provided by the compensation act, the employer is eager to settle his claim according to that act and pay the compensation therein provided, and a settlement can be thus readily affected, provided some claim agent, employed on account of certain qualifications and lack of others, can persuade the injured man to discount the amount provided by the act from twenty-five to fifty per cent for cash, which the financial condition of the once faithful but now dismembered employe often compels him to accept.

But on the other hand, if an employe who, perhaps has spent his life's energy at from eleven to sixteen cents per hour, as a laborer on the section, or, other position commanding a meager salary, receives an injury, where the circumstances attending the injury, except for the provisions of the compensation act, might cast his frail bark to the tender mercies of the wild and uncertain waves of contributory negligence, the hazards of the fellow-servant rule, or the unknown port of assumed risks, the employer will boastingly assert itself through its trained claim agent that because at some time in the distant past perchance it was engaged in some degree in carrying on interstate commerce, that it is not subject to, or amenable to, state legislation, and not liable under a state compensation act, but out of the goodness of his heart and on account of his unrelenting love for the employe, this claim agent offers to make him a gift of One Hundred Dollars, which is often more than the employe has ever seen before.

He has been out of work since he received his injury. His grocer has refused to extend credit and his physician has refused to attend him further. He is uneducated and uninformed as to his rights. The claim agent has told him in confidence that he could get nothing except what his employer would extend through the hand of charity and benevolence. It is his first experience with the ravens of greed. He believes all that has been told him in his hour

of distress. The result is that the claim agent leaves him with a release of all claims after deducting from the money paid the Notary's fees for the certificate of acknowledgment.

That the conditions above stated apply only to a small per cent of the employers of labor is a tribute to humanity and to American manhood and patriotism. It bespeaks volumes for our national welfare. It elevates our standard of civic honor. However, the fact that even a few of the employers of labor have sought by technical application and nonsensical construction to violate the law under the guise of its enforcement and make its application a matter of pleasure and convenience, has given rise to a popular demand for federal legislation on the subject of compensation for injured employes, engaged in interstate commerce.

In this connection two questions arise, first: is there any real necessity for a national law upon the subject, and second: is such legislation within the power of Congress. Both questions must be answered in the negative. The first question above propounded must be so answered because the state statutes upon the subject are complete within themselves and apply to all employes within the state without regard to the character of their employment. The contention that such statutes cannot legally apply to employes engaged in interstate commerce has no basis in any rule of law, reason or logic. It is as unsound as it is ridiculous. Such a contention can only be based upon the erroneous assumption that Congress has legislated in the same field of enactment. The only federal legislation which anyone has ever contended covered the same field as that covered by state compensation acts is the employer's liability act passed by Congress and approved by our Supreme Court. If that act should be construed literally, as written, there possibly might be some force in the position that state compensation acts when applied to interstate employes encroached upon its field, but it has not been so construed and cannot be without impairing its validity. If it had not been construed and defined by the Supreme Court, such a construction might, in ignorance, be made in good faith, but with its construction announced, this contention can only be made for some unlawful purpose.

The power of Congress over interstate commerce is found in Section 8, Article 1, of the Constitution. The power is there given to regulate commerce among the several states and to make all laws which shall be necessary and proper for that purpose. Congress has no other or greater power with reference to that subject.

It follows from the language of the organic law, that an act, to be within the scope and power of Congress, must have for its purpose the regulation of commerce among the several states, directly and not remote, and unless it falls within that class, it is beyond the power of Congress.

The converse of this rule is also true, and if a state statute invades the above field in which Congress has already legislated, it must give way to the national law. That the power of Congress in its proper field is complete and paramount, is so elementary that it need not be restated, and it is the essence of this power that where it exists, it necessarily dominates.

The Employers' Liability Act occupies a distinct legislative field and not one in any sense invaded by state legislation upon the subject of compensation for accidental injuries. Commerce is an act done by the labor of men and the help of things. An employe engaged in commerce among the states is an instrument of commerce—as much so as a locomotive, a car or other instrument, in carrying such commerce.

The Employers' Liability Act operates upon the employe as an instrument of commerce and has a direct relation to that subject. It was argued in the second Employers' Liability cases that the act was merely a regulation of the relation between master and servant, and did not in any sense relate to the subject of commerce, but the

court refused to concur in that view and sustained the act upon the sole ground that its one purpose and object was to prevent negligent acts and omissions which directly affected interstate commerce and held that each and every provision of the act had a natural tendency to that end and was directly related to interstate commerce, and was therefore clearly an act to regulate commerce, and consequently within the power of Congress.

The reasoning of the court is unanswerable. Under this act the fellow-servant rule is abolished. Its several provisions tend to promote greater care, resulting in safety, security and dispatch of interstate commerce. The liability imposed by the act will furnish an incentive to discharge the negligent servant for whose negligence the master is made directly liable, and financially responsible. The negligence of the employe endangers the employer's business and his other employes and servants as well. The master is, by the act, made liable to respond in damages for negligence for which he had theretofore not been liable, so that the central and controlling idea pervading the several sections of the act is greater care and efficiency on the part of the employe, greater care in their selection and retention by the master, inuring to the safety, security and dispatch of commerce among the states, and the liability imposed is but a means to an end—the means being increased and additional burdens imposed upon the master, and the end is the regulation, safety and security of commerce.

The act was sustained solely upon the ground that it was a regulation of commerce and the court say that "to regulate" is to foster, protect, control and restrain with appropriate regard for the welfare of those who are immediately concerned and of the public at large. That an act providing for compensation to injured employes is in no sense an act relating to commerce, is too apparent to require any discussion. Such legislation lacks all the essential features to bring it within the same legislative field. True, it may in some respects incidentally affect commerce, but a regulation, to come within the commerce clause of the Constitution, must be direct and logical and not indirectly, remote nor merely incidental.

The regulation of compensation for injured employes does not tend either to prevent or encourage negligence, nor to promote or obstruct commerce in any sense. It bears no direct relation to commerce whatever but deals exclusively with and regulates the relations between master and servant, nor can it be assigned to that class of legislation which has been held invalid as placing an unjust or additional burden upon interstate commerce. Its purpose and object is the very purpose and object which the court was compelled to get away from in order to sustain the Employers' Liability Act, namely, the regulation of the relations between master and servant.

Compensation acts relate to the injured employe as a member of society and thereby promote the general welfare of the body politic. The liability act affects him in health as an instrument of commerce and while engaged therein, while the compensation act affects him only after he has, by injury, been disqualified as an instrument of commerce, and while he is incapacitated as such. To say that the latter acts affect commerce is to say that an injured employe after his employment has ceased, is an instrument of commerce within the commerce clause of the Constitution, and to state this proposition is to refute it.

To say that the unfortunate employe who had lost his limbs in the interstate service, perhaps five years after, while selling pencils on the public streets, and drawing his compensation, was still an instrument of commerce, would be too great a tax upon human credulity. Nor can it be said that an employe who is accidentally killed in the course of employment will continue during the period in which the compensation is to be paid, which is usually eight years, to be an instrument of commerce. Such an absurd construction would not only

do violence to language of common meaning, but would impute to the courts of this country an ignorance seldom equaled and never excelled.

It follows that one is an act to regulate commerce while the other is one tending to promote the general welfare of society by regulating the relation existing between master and servant, and bears no relation directly or remotely to the subject embraced within the other. It also follows that Congress is without power to legislate upon the subject of the relation between master and servant and statutes fixing compensation for injured employes, being purely regulations concerning such relation, that it is a subject beyond the powers conferred by the commerce clause of the Constitution.

The reasonable deductions therefore are that there is neither necessity nor power for federal legislation upon the subject of compensation to employes for injuries received in the course of their employment. What we need is a more rigid and effective method of enforcing state statutes by penalizing the few employers who seek to trifle with the rights of others and have no regard for the welfare of humanity nor respect for the law of the land.

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MUNICIPAL CORPORATIONS — OVERHEAD SIGNS.

HASS v. BOOTH. (No. 337.)

Supreme Court of Michigan. July 25, 1914.

148 N. W. 337.

Evidence that an advertising sign suspended above the sidewalk fell at a time when there was no unusual atmospheric disturbance, and that no inspection had been made for seven months prior to its fall, was sufficient to make the negligence of the party maintaining the sign a question for the jury.

BROOKE, J. At about 2 o'clock in the afternoon on the 13th day of July, 1912, plaintiff was passing along Gratiot avenue near its intersection with Woodward avenue in the city of Detroit. When she had almost reached the corner, a sign 8 feet long, 4 feet wide and 8 inches thick, maintained by the defendant for advertising purposes, and suspended between 20 and 25 feet above the sidewalk, fell. In falling it struck plaintiff, causing the injury of which compaint is made. The sign had been erected two years and two months prior to the accident by Walker & Co., competent and reputable sign builders of the city of Detroit. On December 13, 1911, exactly seven months prior to the happening of the accident, the sign was inspected by an inspector from the department of buildings of the city of Detroit, who issued to the defendant the following certificate:

"This certifies that the sign projecting from the building at the northeast corner of Woodward and Gratiot avenues has been inspected and found to be in safe condition. (Signed) Department of Buildings."

The defendant, being examined under the statute by plaintiff's counsel, testified as follows:

"Q. And from the time that Walker & Co. installed that sign until the time of the accident you yourself gave no inspection? A. I would look at the sign occasionally. Q. Did you test it in any way? A. No, sir. Q. The only inspection that that sign got was from the department of buildings? A. That is all I know of, yes."

The record discloses that at the time of the occurrence of the accident there was no unusual atmospheric disturbance.

(1) The declaration charged the defendant with negligence in the construction of the sign in question, negligence in the maintenance of the sign, and negligence in failure to properly inspect. The court directed a verdict for the defendant, holding that, he having engaged a competent and reputable contractor for the purpose of erecting the sign, he was therefore absolved from liability based upon a negligent erection. The court further held upon this point that plaintiff's action, if any, would be against Walker & Co. as an independent contractor. This construction was erroneous. See Lauer v. Palms, 129 Mich. 671, 89 S. W. 694, 58 L. R. A. 67, and authorities there cited. Also McHarge v. Newcomer, 117 Tenn. 595, 100 S. W. 700, 9 L. R. A. (N. S.) 298. The court below then held that there was no evidence sustaining the charge of negligent maintenance of the sign, and that the inspection by the appropriate city department was adequate. It was and is the contention of the defendant, which view was accepted by the court below, that the record was entirely barren of

evidence indicating any negligence on the part of the defendant which contributed to plaintiff's injury, and that to permit a recovery would be to allow the jury to indulge in conjecture as to the cause of the accident, and ultimately to base their verdict upon the single fact that the sign had fallen and the plaintiff was injured. We are not able to agree with this view of the case. It may be stated at the outset that the authorities as to the liability of one for injury, occasioned to a pedestrian lawfully upon the street, by the falling of a sign or awning maintained by the owner or occupier of a building, and suspended over the sidewalk, are not harmonious. In most jurisdictions it is held that the doctrine of res ipsa loquitur applies, but that the defendant may avoid recovery by affirmative proof showing that he had exercised ordinary care. The question is fully discussed in Waller v. Ross, 100 Minn. 7, 110 N. W. 252, 12 L. R. A. (N. S.) 721, and note, 117 Am. St. Rep. 661, 10 Ann. Cas. 715. A later case upon the subject is McCrorey v. Garrett, 109 Va. 645, 24 S. E. 645, 24 L. R. A. (N. S.) 139. In the latter case the defendant was held liable for injury occasioned by a falling awning maintained without legislative authority, regardless of the question of his negligence, either as to its construction or maintenance. In that case it is said:

"So far as the right of the public to travel unmolested over the highway is concerned, the dominion of the people is absolute, and is not confined to obstructions on the surface of the street, but extends with equal emphasis to encroachments upon the public right either below or above the surface. Indeed, an obstruction above the street that may injure the traveler is more dangerous than one on the ground, because the latter is more readily seen and avoided"—citing Wood on Nuisances (3rd Ed.) vol. 1, § 275, pp. 141, 142; Elliott on Roads and Streets, vol. 2 (3rd Ed.) §§ 790, 830; 2 Dil. Mun. § 1033.

In Wood on Nuisances, supra, it is said:

"Every person in traveling upon a public street has a right to absolute safety, while in the exercise of ordinary care, against all accidents arising from obstructions of or imperfections in the street, and this applies as well to what is in the street as to what is over it. * * * It would seem that all signboards, cornices, blinds, awnings, and other things projecting over a walk, or so situated with reference thereto that if they fall they may do injury to travelers, are nuisances unless so secured as to be absolutely safe, and the person maintaining them is liable for all injuries arising therefrom, except such as are attributable to inevitable accident."

This court has never had occasion to determine exactly what degree of care would absolve from liability one who maintains a sign or awning over a public street for his own purpose in case said sign or awning fell upon a foot passenger lawfully occupying the sidewalk thereunder. It has frequently been held that any encroachment upon a street, either on or above the surface of a permanent nature, which endangers or interfers with its use, is a public nuisance. Dillon on Municipal Corporations, §§ 586, 587-730-1032; Wood v. Mears, 12 Ind. 515, 74 Am. Dec. 222; Van O'Linda v. Lathrop, 21 Pick. (Mass.) 292, 32 Am. Dec. 261; Raymond v. Keseberg, 84 Wis. 302, 54 N. W. 612, 19 L. R. A. 643; Sikes v. Manchester, 59 Iowa, 65, 12 N. W. 755; Welsh v. Wilson, 101 N. Y. 254, 4 N. E. 633, 54 Am. Rep. 698. The English courts come very nearly to holding that the duty to maintain such a structure in safety is an absolute one. Tarry v. Ashton, L. A. 1 Q. B. Div. 314. See, also, Roberts v. Mitchell, 21 Ont. App. Rep. 433.

(2-4) In this case plaintiff does not contend that defendant must maintain a structure at his peril. He urges however, that one who maintains, suspended over the sidewalk of a crowded city for his own purpose, a sign or other structure, which if permitted to fall is liable to kill or injure those lawfully using the sidewalk beneath it, should be charged with a very high degree of care. It is unnecessary, therefore, in the instant case to say more than that the plaintiff's contention as to defendant's duty is warranted by the law. This duty is not lessened by reason of the fact that the offending party may have secured the right to maintain said sign from the legislative authority of the municipality, nor by the further fact that the municipality itself, through a failure to cause the removal of such sign or structure as a nuisance, might itself be liable under the authorities last cited. The facts in the case at bar disclose more than the simple falling of the sign. They show that the defendant for seven months prior to the day of the accident had caused no inspection to be made of the structure. The certificate of the inspector from the department of buildings proves nothing. It does not show whether the inspection was adequate or inadequate. Nor does it have a tendency even to prove that the sign fell because of a latent instead of a patent defect. The language of Mr. Justice Ostrander in the case of Scott v. Athletic Assoc., 152 Mich. 684, 116 N. W. 624, 17 L. R. A. (N. S.) 234, 125 Am. St. Rep. 423, 15 Ann. Cas. 418, is applicable:

"The testimony goes much beyond proving merely an accident and resulting injury. That relied upon to show that defendants exercised due care tends to prove that the stand was erected by a competent and experienced builder, of good materials; that before it was used it was inspected by engineers and others admittedly competent to perform the work of inspection, who pronounced it safe. It is clear, however, that a wholly inadequate structure was in fact tendered for public use, and it cannot be determined, upon this record, as a matter of law, that a latent and not a patent defect, discoverable in the exercise of proper care, existed."

See also, Barnowsky v. Helson, 89 Mich. 523, 50 N. W. 989, 15 L. R. A. 33; Lauer v. Palms, supra.

The question of defendant's negligence under proper instructions as to his duty in the premises should have been submitted to the jury.

The judgment is reversed, and a new trial ordered.

NOTE.—*Injury to Pedestrian from Overhead Signs and Awnings.*—It is not intended in this note to advert to municipal liability for injury to a pedestrian from the falling of a sign or an awning, but only to the liability of any person who maintains such a sign or awning overhanging a street, its fall causing injury to a pedestrian lawfully thereon and exercising due care.

It seems to us that decision is practically divided into two lines of cases, those which hold to absolute liability and those which declare for a rebuttable presumption of negligence, in other words the doctrine *res ipsa loquitur*.

In Congreve v. Smith, 18 N. Y. 79, it was said: "The general doctrine is that the public are entitled to the street or highway in the condition in which they placed it; and whoever without special authority, materially obstructs it or renders its use more hazardous, by doing anything upon, above or below the surface, is guilty of a nuisance; and as in other cases of public nuisance, individuals sustaining special damage from it, without any want of due care to avoid injury, have a remedy by action against the author or person continuing the nuisance. No question of negligence can arise, the act being wrongful."

In a later case by the same court, Clifford v. Dam, 81 N. Y. 52, the same doctrine was announced with regard to a coal hole in the sidewalk and any evidence to show permit from city was immaterial, as this was a mere privilege for a private benefit to interfere in no way with safety.

In McCrorey v. Garrett, 109 Va. 645, 64 S. E. 978, 24 L. R. A. (N. S.) 721, there seems a distinction between absolute safety being guaranteed, where there is no legislative authority for an overhanging sign, and *res ipsa loquitur*, where there is. But it may be doubted from the argument used and the citation of cases whether only a permit or ordinance would be sufficient to bring the case down to mere *ipsa loquitur*. For ourselves we see no reason for either changing the measure of liability in making the maintenance of the obstruction permissible, and if the legislature may relieve it from being a nuisance an ordinance or an express permit may. In either event the authority is for a private benefit, and presumably for nothing else, and it is taken *cum onere* as to all rights of safety guaranteed to the traveling public.

McCrorey v. Thomas, 109 Va., 373, 63 S. E. 1011, arose out of the same accident and the doctrine *res ipsa loquitur* was held to exist notwithstanding an awning was blown down during a high wind. The court said: "In the exercise and maintenance of the awning, the defendant was bound to exercise ordinary care to see that it was so secured and managed as to be able to withstand not only the ordinary vicissitudes of the weather, but the force of winds which experience had shown to be liable to occur in that locality." Here the rule is stated not altogether so strongly as in the Garrett case *supra*, except that anticipation seems more broadly stated.

A Georgia case stating the rule in about the same way as the Virginia cases holds as does the instant case about certificates of inspector proving nothing, the suit being by a city against abutting owner. Byne v. Americus, 6 Ga. App. 48, 64 S. E. 285.

In Mansfield v. New York, 119 N. Y. App. Div. 199, 104 N. Y. Supp. 386, the theory of there being no substantial difference so far as safety of pedestrians is concerned, in an obstruction being or not a nuisance is maintained, and we imagine that a city could recover for any judgment obtained against it on the same theory.

If a sign is appended to a building in violation of an ordinance, so as to hang over a street and a wind of extraordinary violence blows it away so as to cause injury to one in another building the owner of the sign, there is liability. The court said: "If the defendants' sign had been rightfully placed where it was, the question would have been presented whether he had used reasonable care in securing it. If he had done so, the injury would have been caused without his fault, by the extraordinary and unusual gale of wind which hurled it across the street and against the plaintiff's window. The party injured has no remedy for an injury of this character, because it is produced by the vis major." Salisbury v. Herchenroder, 106 Mass. 458, 8 Am. Rep. 354. This ruling might protect had the injury been to a pedestrian in the street, but it may be at least argued that the same safety is not guaranteed to one in his own house as to a pedestrian in the street.

McHarge v. Newcomer, 117 Tenn. 595, 100 S. W. 700, 9 L. R. A. (N. S.) 298, is an instructive case upon *res ipsa loquitur* as against the owner of an overhead awning, even though the suit be against such owner and the negligence presumed is that of an independent contractor. The court does not discuss the question of absolute safety.

In Loth v. Columbia Theater Co., 197 Mo. 328, 94 S. W. 847, a distinction appears to be drawn between a city as an insurer of the safety of its citizens in the use of its streets and the owner of an overhanging sign. It was contended that such a sign was not a nuisance *per se* as to such sign, it being merely the duty of a city to protect its citizens in the use of its streets and in the performance of such duty it is not an in-

surer. This case was reversed as to the city and reversed and remanded as to the owner of the sign, the error as to the latter being on a question not germane to the inquiry here pursued. The petition as to this defendant declared upon negligence and the instruction was as to nuisance *per se* and was held erroneous as not following the pleadings.

In St. Louis I. M. & S. R. Co., 54 Ark. 209, 15 S. W. 610, 12 L. R. A. 189, it was ruled that a sign owner must take such precautions as to make it secure against the ravages of winds which might be expected in the regular course of the season.

It may be said that in all cases we have examined, where the doctrine *res ipsa loquitur* was applied, that it was not necessary for the court to go any further, and they could go a great length in this way as the instant case shows. But we do not understand, why, if the exigencies of a case required a court to say whether one placing an overhead sign obstruction in a street was or not responsible to any passerby for injury therefrom, any distinction should be drawn as to its being a nuisance *per se*, or as to the owner exercising every reasonable precaution in fastening it securely. It would seem to be all the same to a pedestrian whether it is a nuisance *per se* or not, if the obstructor used every care against its injuring another. Legislatures or cities by ordinance are not supposed to be granting privileges over highways for individual benefit by any relaxation of the doctrine of private right in a public highway. There can be no thought of this kind in such grant of privilege.

C.

ITEMS OF PROFESSIONAL INTEREST.

THE NEUTRALITY OF BELGIUM FROM THE ENGLISH STANDPOINT.

The English law journals for the first week in August have just arrived and are filled from cover to cover with war articles and editorials.

The Solicitors Journal contains one very interesting article on the Neutrality of Belgium, which is carefully written from the legal standpoint, although not wholly free from partisan comment.

The question of Belgium's neutrality is a question of public law and one which may be discussed apart from the merits of the present war in Europe.

Such tremendous issues have turned in the last week on the question of the neutrality of Belgium that it is essential to know exactly how this neutrality is constituted and what are its effects in public law. Belgium, as is well known, was formerly part of the Low Countries or Netherlands, and suffered much from its subordination to Spain and afterwards to Austria. After the various changes of the Revolutionary Wars from 1790 to 1814 it was, in the latter year, united to Holland to form the Kingdom of the Netherlands. But the Belgians were essentially different in character, ideas and religion from the Dutch, and the differences culminated in the outbreak of 1830—an outbreak sympathetic with the revolution which had just taken place in France—with the result that Holland and Belgium were separated, and Luxembourg divided between them, by the Treaty of London of the 15th of November, 1831. This contained the following clauses (Martens, Vol. 11, pp. 394, 404):

Art. 7.—Belgium, within the limits assigned by articles 1, 2 and 4, shall form a State independent and perpetually neutral. It shall be bound to observe the same neutrality towards all other States.

Art. 25.—The courts of Austria, France, Great Britain, Prussia and Russia guarantee to His Majesty the King of the Belgians, the execution of all the preceding articles.

The treaty was ratified by the Belgian and French sovereigns on the 20th and 24th of November, and by the British on the 6th of December, but the Austrian, Prussian and Russian Governments, owing to their sympathy with the King of Holland, did not give their ratification till later. The King of Holland himself only gave in after forcible pressure from England and France, and his adhesion was made the occasion of a new treaty, that of the 19th of April, 1839, also signed at London. By this the treaty of 1831 was abrogated, and though Art. 7 of the earlier treaty, as cited above, was repeated, the manner in which this was done requires to be stated exactly.

On the same date as the new treaty, a treaty was made between Holland and Belgium which was in terms identical with that of 1831, save, of course, that Art. 25, containing the guarantee of the Great Powers, was omitted (Martens, vol. 16, p. 773). This was made an annex to the new treaty between the Powers, which in consequence did no more than adopt it and repeal the earlier treaty. The operative clauses of the new treaty, with immaterial omissions, were as follows:

Art. 1.—The Emperor of Austria, the King of the French, the Queen of the United Kingdom of Great Britain and Ireland, the King of Prussia, and the Emperor of Russia declare that the articles hereto annexed and forming the tenor of the treaty of even date between the King of the Belgians and the King of Hol-

land, are considered as having the same force and value as if they were textually inserted in the present Act and they are thus placed under the guarantee of their said Majesties.

Art. 2.—The treaty of the 15th of November, 1831, is declared to be no longer obligatory upon the High Contracting Parties.

Referring to this treaty the Solicitor's Journal says:

"The treaty between Belgium and Holland was ratified by Holland on the 26th day of May and by Belgium on the 28th of May. The treaty between the Great Powers and Belgium was ratified by Belgium on the 28th of May; by Austria on the 19th of May; by France on the 18th of May; by Great Britain on the 22nd of May; by the King of Prussia on the 20th of May; and by the Emperor of Russia on the 6th of May, all in 1839 (Martens, vol. 16, pp. 809-823); and it was adopted by the then Germanic Confederation on the 8th of June in the same year (ibid pp. 825-847). On the outbreak of the Franco-German war each of the belligerents entered into a special treaty with Great Britain to respect the neutrality of Belgium under the treaty of 1839, but the validity of that treaty was expressly reserved, and after the war it was to remain in full force. The possibility that these special treaties might have displaced that of 1839 was discussed in Parliament, and it was shown that this had been carefully guarded against (Hansard, 3rd Ser., cciii., p. 1778)."

After setting forth the details of this treaty arrangements between the Great Powers for the neutrality of Belgium, our contemporary proceeds to comment on the effect of such a guarantee of neutrality:

"The rights and obligations of a permanently neutralized state are the same as those of any other state which is in fact neutral. In particular, it is under an obligation not to assist either belligerent, and to prevent belligerents from making use of its territory for military purposes (Oppenheim II. 368). This duty was observed by Switzerland in 1870 and 1871, during the Franco-German war, when she prevented the transport of troops and war material of either party across her territory, and disarmed and detained a French army of 80,000 men which had taken refuge there. It was observed by Belgium at the same time when, after the battles of Sedan and Metz, she refused to allow the German wounded to be sent home through her territory (ibid. p. 393). It is said, indeed, to have been an undisputed doctrine during the eighteenth century that a neutral state might grant a passage through its territory to a belligerent army, and that the concession formed no ground of complaint on the part of the other belligerent (Hall, International Law, 6th ed., p. 594). And some writers have said that in cases of extreme necessity, the belligerent might effect his passage, even against the will of the neutral (ibid. p. 594, note (1)). But the author just quoted, after referring to the subsequent change of opinion and practice, continues:

"There can be no question that existing opinion would imperatively forbid any renewed laxity of conduct in this respect on the part of neutral countries. Passage for the sole and obvious purpose of attack is clearly forbidden."

Our contemporary then takes up the question whether Germany violated her own promise of neutrality.

"There is no great difficulty in applying the above principles to recent events. Germany was, of course, bound by the obligations undertaken in the past by the King of Prussia and the North German Confederation, and one such obligation was not herself to violate the Belgian neutrality. This she has done by sending troops on to Belgian soil and attacking the Belgians and her infringement of the treaty seems to be clear. The obligation of Belgium was to maintain her neutrality and to resist Germany's action by force so far as she could do so with a reasonable chance of success. This she has done in such a manner as to place herself entirely in the right and to earn the respect of her friends. Her merits, indeed, are measured by the extent of Germany's default."

Finally, coming to the delicate question of England's duty as a guarantor of Belgium's neutrality when confronted with its violation by a co-guarantor, we cannot expect the writer, an English lawyer, to be wholly without prejudice. The writer says:

"There remains the question of the obligation of the other signatory Powers. Under the treaty of 1831, each gave a guarantee to Belgium. Was this a guarantee only for its own conduct, or for the conduct of the others as well? Under the treaty of 1839, the neutrality of Belgium was placed under the guarantee of the Powers. The expression is varied, but not the meaning. In the case of Luxembourg the guarantee is 'collective.' But in all these cases the construction of the obligation must depend upon general principles, and not upon nice discrimination of 'joint,' or 'collective,' or—as in the case of the guarantee of Turkish independence by England, Austria and France

in 1856—'joint and several.' A leading consideration is whether the guarantee was for the benefit of the guaranteed State only, or for the benefit of all the signatories. In the former case, the guarantors need only intervene on the request of the guaranteed; in the latter, any guarantor can take the initiative (Hall, p. 335); though whether it will do so much must depend on the interests at stake. The present case falls under both heads. The neutrality is for the benefit of Belgium as well as of the signatory Powers, and the request of Belgium for assistance, and her own readiness to defend her neutrality, for practical purposes leave no doubt as to the obligation of signatories who respect the treaty. Of course, if the Belgian refusal had been unreasonable, the case would have been different. But Germany's requirement was opposed to the vital interests both of Belgium herself—for her independence was threatened—and of the other co-signatory Powers, in particular, France. Under these circumstances it seems clear that Great Britain was under an obligation to enforce the collective guarantee against a recalcitrant guarantor;" otherwise there would be an end of public law."

BAR ASSOCIATION MEETINGS FOR 1914—WHEN AND WHERE TO BE HELD.

American Bar Association—Washington, D. C., October 20, 21 and 22.
California—Oakland, November 19, 20 and 21.
Missouri—St. Louis, latter part of September.
North Dakota—Grand Forks, September 15.
Oregon—Portland, November 17 and 18.
Rhode Island—Providence, December 7.
Vermont—Montpelier, October 6.
West Virginia—Parkersburg, December 29 and 30.

CREDIT TO WHOM CREDIT IS DUE.

When this journal says anything that is reproduced by one of its contemporaries, it believes it should receive credit therefor.

The Law Students' Helper for August attributes to another esteemed contemporary the following: "An attorney who puts his adversary to useless trouble and expense commends himself not very greatly to the court in which he appears, nor does he have an over-pleasant time in association with his (professional) brothers."

We find that this sentence originally appeared in 75 Cent. L. J. 88, a little over two years ago, and the fact, that it seems to our contemporary worthy of republication at this late day, makes us all the more desirous of due credit being extended. EDITOR.

BOOKS RECEIVED.

The American Digest, Annotated. Key Number Series, Vol. 17. Continuing without omission or duplication the Century Edition of the American Digest, 1658 to 1896, and the Decennial Edition, 1897 to 1906. A Digest of all Current Decisions of all the American Courts, as reported in the National Reporter System, the Official Reports, and elsewhere, from July 1, 1913 to December 31, 1913, and Digested in the Monthly Advance Sheets for August, 1913, to and including January, 1914 (Nos. 275-280). Prepared and edited by the Editorial Staff of the American Digest System. Price, $6.00. St. Paul. West Publishing Company, 1914. Review will follow.

HUMOR OF THE LAW.

Magistrate—"Can't this case be settled out of court?"

Mulligan—"That's what we were trying to do, your honor, when the police interfered."—Brooklyn Life.

Into the police court of Mobile there had been haled for the fourth time a negro boy, charged with chicken stealing. The magistrate determined to appeal to the boy's father.

"See here," said His Honor to the parent, "this boy of yours has been up in court so many times for stealing chickens that I am tired of seeing him here."

"I doesn't blame yo', Jedge," said the father, "an' I's tired of seein' him here."

"Then why don't you teach him how to act? Show him the right way, and he won't be coming here."

"I has showed him de right way, Jedge," said the old man, very earnestly. "I has cert'n'y showed him de right way, but somehow dat wuthless nigger keeps gittin' caught comin' away wif de chickens."—Argonaut.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Attorney and Client**—Services.—An attorney cannot recover for services which are of no value to his client because of his lack of ordinary skill or diligence.—Gabbert v. Evans, Mo., 166 S. W. 635.

2. **Bankruptcy**—Concealing Assets.—Concealment of assets of a bankrupt before the appointment of a trustee and continuing after such appointment held a concealment from the trustee in violation of Bankr. Act 1898.—Kaufman v. United States, U. S. C. C. A., 212 Fed. 613.

3.——Mortgages.—A suit by a trustee in bankruptcy against a mortgagee of the bankrupt to recover possession of property taken by the mortgagee under an alleged invalid mortgage is an independent and plenary suit by the trustee, and the mortgagee, answering to the merits, thereby admits the trustee's capacity to sue—In re Federal Contracting Co., U. S. C. C. A., 212 Fed. 688.

4.——Practice.—The right of a trustee in bankruptcy intervenes as of the date of the filing of the petition in bankruptcy, unaffected by any subsequent act of a mortgagee of the bankrupt in taking possession, unless the mortgage was duly acknowledged and recorded.—In re Federal Contracting Co., U. S. C. C. A., 212 Fed. 688.

5. **Banks and Banking**—Agency.—Where a bank, having agreed to make a loan against certain collateral, turned over the borrower's note and collateral to an officer of the bank, who made the loan personally, the bank was not liable for the officer's subsequent conversion of the collateral.—McKinnon v. Western Develpoment Co., U. S. C. C. A., 212 Fed. 702.

6——Guarantor.—A depositor of a check purporting to be properly indorsed stands in the position of guarantor to the bank, and must repay the amount of the check to the bank bound to make up a loss occasioned by an unauthorized indorsement.—Marcuson v. Yorkville Bank, 147 N. Y. Supp. 472.

7.——Overdraft.—An agreement by a bank to permit a depositor to make an overdraft on the bank was equivalent to a loan to the depositor, so as to place the depositor in the position of having a credit with the bank.—Sagerton Hardware & Furniture Co. v. Gamer Co., Tex., 166 S. W. 428.

8. **Bills and Notes**—Accommodation Maker.—Under Negotiable Instruments Act, an accommodation maker is not discharged by an extension of the time of payment, pursuant to an agreement, made without his knowledge, by the holder and principal maker.—Cowan v. Ramsey, Ariz., 140 Pac. 501.

9.——Indorsee.—One who obtained a check from another by false pretenses, the consideration for which the maker signed the check never having passed, held primarily liable to an indorsee, so that a payment by him to the indorsee discharged the check as against all parties, within Negotiable Instruments Law.—Josephsohn v. Gens, 147 N. Y. Supp. 451.

10.——Negotiable Instruments Law.—A Written instrument by which the maker agreed to pay to the order of the payee $2,340 currency, the amount of the second installment on a crane of the payee's manufacture, held a "negotiable note" within Negotiable Instruments Law.—Merchant's Nat. Bank of St. Paul v. Santa Maria Sugar Co., 147 N. Y. Supp. 498.

11.——Pleading.—Note payable at particular place, declared on as payable generally, held not admissible in evidence, as the fact that it is payable at any particular place is material, and must be alleged.—Shaw v. Newton Del., 90 Atl. 465.

12.——Presumption—A holder of notes, who obtains a judgment thereon, has no legal right to retain possession of the notes, and any presumption arising from the possession of the notes is without any force as to him.—Utah Commercial & Savings Bank v. Fox, Utah 140 Pac. 660.

13. **Carriers of Passengers**—Assumption of Risk.—A street car passenger, who rides on a side step when it is reasonably practicable for him to go inside, assumes all the risks of his position; but, when he so rides at the conductor's invitation or with his assent and from necessity because of the crowded condition of the car, he is entitled to the same protection against dangers as are other passengers.—Simkins v. Philadelphia Rapid Transit Co., Pa., 90 Atl. 527.

14.——Private Carrier.—Those of whom one hires an automobile with a chauffeur to drive him and his guests where he directs being a private carrier for hire, are required to use ordinary care and diligence in the performance of the duty imposed on them by the contract.—Forbes v. Reinman &Wolfort, Ark., 166 S. W. 563.

15.——Relation.—By the common law the relation of carrier and passenger does not terminate until after the passenger has alighted and has a reasonable time and opportunity to leave the depot, the question of what is a reasonable time and opportunity being one of fact, dependent on the circumstances of the particular case.—Missouri. K. & T. Ry. Co. of Texas v. Cook, Tex., 166 S. W. 453.

16. **Chattel Mortgages**—Conditional Sale.—Where a seller of furniture took a chattel mortgage back to secure the price, it was not a conditional sale, for the title passed to the purchaser and then back under the chattel mortgage.—McMail v. Michaels, 147 N. Y. Supp. 516.

17.——Description.—A chattel mortgage of 10 bales of cotton of the crop of 1910 then being picked and to be ginned in a certain county would not convey any specific bales, but in equity would be sufficient to convey an interest in the cotton described in the proportion of 10 bales to the entire amount then being picked by the mortgagor.—Burlington State Bank v. Marlin Nat. Bank, Tex., 166 S. W. 499.

18. ——Retaking Chattel.—It is only where the mortgagee appropriates a retaken chattel to his own use that the mortgage debt is satisfied by his possession of it.—Bloomingdale v. Gaudio, 147 N. Y. Supp. 432.

19. **Common Law**—Adoption of.—The adoption of the common law in Kansas did not adopt the common law definition of navigable waters, since prior thereto such definition had been repudiated by the Supreme Court of the United States and by many of the states.—State v. Akers, Kan., 140 Pac. 637.

20. **Compromise and Settlement**—Protest.—Where an injured lumberman accepted, under protest, a check for a sum less than was due him because he had to have funds to make his way home, and would otherwise have been unable to leave the lumber camp, there was no settlement; the master not having expressly imposed any conditions.—Price v. McEachern, Me., 90 Atl. 486.

21. **Conspiracy**—Effect of.—Where a conspiracy is not directed to any particular person, it may be charged as an intended wrong against a class of persons or the general public, without a more specific designation.—State v. Mardesich, Wash., 140 Pac., 573.

22.——Postmasters.—A conspiracy to increase the gross receipts of a postoffice upon which the postmaster's salary is to be fixed by the purchase of large quantities of stamps to be used in mailing matter outside of such postoffice is one to defraud the United States.—United States v. Foster, 34 Sup. Ct. Rep. 666.

23. **Contracts**—Completion of.—When parties conduct negotiations through the mail, the contract is completed the moment a letter accepting the offer is mailed, provided it is done with due diligence after receipt of the proposal, and before any intimation that it is withdrawn.—Porter v. Gossell, Ark., 166 S. W. 533.

24.——Consideration.—An agreement by defendant, who misappropriated whisky sold and shipped by plaintiff to a third person, to pay plaintiff its claim against the third person, was not supported by a consideration unless plaintiff released the third person and he had released defendant on account of its wrongful misappropriation of the whisky.—L. & A. Scharff Distilling Co. v. Springfield Coal, Ice & Transfer Co., Mo., 166 S. W. 654.

25.——Construction.—Where the parties to a contract fail to provide for a contingency which afterwards happens from failure to contemplate its possibility, the agreement must be interpreted as written, and the language employed given its natural and commonly understood meaning.—United States Fidelity & Guaranty Co. v. French Mut. Gen. Society of Mut. Ins. against Theft, U. S. C. C. A., 212 Fed. 620.

26.——Covenants.—Where a business is sold with the good will, a covenant restraining the seller from re-engaging in the business, when partial and only co-extensive with the good will sold, is valid and enforceable in equity.—Metropolitan Opera Co. v. Hammerstein, 147 N. Y. Supp. 532.

27.——Entire Contract.—If an entire contract to drill a well for a stipulated price was not performed and the work was not accepted, no recovery can be had.—Brown v. Vestal, Ark., 166 S. W. 556.

28.——Specifications.—Under a contract providing that the theater building to be built and leased by defendant should be equipped according to specifications, which, in fact, were prepared as the work progressed, the architect's failure to prepare complete specifications of fixtures and decorations held not to relieve defendant from his obligation to furnish such equipment as was usual and necessary.—Orpheus Vaudeville Co. v. Clayton Inv. Co., Utah, 140 Pac. 653.

29. **Corporations**—Amending Articles. — A mercantile agency organized under the General Business Corporation Law may amend its articles of incorporation so as to authorize it to guarantee the accuracy of acts in its reports and to specify the amount of its liability; such guaranty not making it a credit guaranty company, within the meaning of Insurance Law, or amounting to any other form of insurance.—People ex rel. Daily Credit Service Corporation v. May, 147 N. Y. Supp 487.

30.—Stockholders.—In the absence of statute in the state in which a person resides, imposing upon him a particular liability as a stockholder in a foreign corporation, the statute of the state incorporating it, or the articles which it adopts, affords the rule regulating his liability to its creditors.—Garetson-Hilton Lumber Co. v. Hinson, Ore., 140 Pac. 633.

31.——Powers.—A corporation organized for pecuniary profit, has power to borrow money and execute a mortgage to secure the same.—In re Federal Contracting Co., U. S. C. C. A., 212 Fed. 693.

32. **Criminal Evidence**—Intoxicating Liquor.—Where accused, charged with violating the local option law, testified in his own behalf, evidence of his reputation for violating the local option law was admissible and inquiries as to his reputation to a time shortly prior to the date of the offense charged were proper.—State v. Fitch, Mo., 166 S. W. 639.

33.—Res Gestae.—Where the defendant killed his wife and another at the same time, declarations by the wife, just after the shooting, which were part of the res gestae, were admissible in a prosecution for the killing of the other.—Robbins v. State, Tex., 166 S. W. 528.

34. **Criminal Law**—Minutes of Grand Jury.—A motion to allow inspection of grand jury minutes as a basis for motion to set aside the indictment on the ground that it was based solely on the testimony of an eight year old witness will be denied.—People v. Posnansky, 147 N. Y. Supp. 548.

35.——Overt Act.—The venue of a prosecution for conspiracy was properly laid in a county where the conspiracy was continued, and an overt act committed, though it was originated in another county.—State v Mardesich, Wash., 140 Pac. 573.

36. **Deaths** — Conjecture. — Where the evidence, in an action for the death of plaintiff's husband, caused by drinking impure water from defendant's water system, left it a mere conjecture whether his illness was so caused, the court properly directed for defendant.—Gosser v. Ohio Valley Water Co., Pa., 90 Atl. 540.

37.——Damages.—Though the action is only for pecuniary loss to decedent's children from his death, evidence of his attention to their instruction is admissible to show his affection for, and interest in them, and so the likelihood that he would have contributed to their future support.—Chicago, R. I. & P. Ry. Co. v. Gunn, Ark., 166 S. W. 568.

38. **Deeds**—Description.—Where plaintiff, in addition to the ordinary count of trespass to try title, prayed reformation of her deed, which, while reciting a conveyance of 160 acres, described only 80, it was improper for the court to direct a verdict in her favor on the ground that the deed on its face showed a conveyance of 160 acres, for a particular description will govern a general one.—Johnson v. Conger, Tex., 166 S. W. 405.

39. **Equity**—Laches.—A state board or other governmental agency, does not exempt from the doctrine of laches any more than from the

statute of limitations.—Board of Levee Inspectors of Chicot County v. Southwestern Land & Timber Co., Ark., 166 S. W. 589.

40. **Fraud**—False Representation. — Actionable fraud is a false representation of a material fact made with knowledge of its falsity, or recklessly without belief in its truth, with intent that it shall be acted on by the party complaining and relied on by and actually inducing him to act on it to his damage.—Moore v. Carrick, Colo., 140 Pac. 485.

41.——False Representation.—Where defendants induced plaintiff to take, as good, a worthless check, there was sufficient evidence of fraudulent misrepresentation to carry to the jury an action for damages for passing the check; the drawing and issuing of the check itself amounting to a representation that the drawers had funds sufficient to meet it.—Fruchtbaum v. Schinasi, 147 N. Y. Supp. 401.

42. **Frauds, Statute of**—Joint Wills.—A joint and mutual will executed by husband and wife and a deed executed by them as part of the same transaction, in consummation of a parol contract between them for the equitable disposition of their property between their children, constitute part performance of the parol agreement as to take it out of the statute of frauds. —Larrabee v. Porter, Tex., 166 S. W. 395.

43.——Memorandum.—A contract to sell a place consisting of four lots in a certain town, it appearing that vendor owned only one place in that town, which consisted of four lots, describes the property with sufficient certainty to comply with the statute of frauds.—Beaton v. Fussell, Tex., 166 S. W. 458.

44.——Parol Contract.—A parol contract of employment for no definite time is not within the statute of frauds.—Hammack v. Friend, Mo., 166 S. W. 647.

45. **Fraudulent Conveyances** — Preference.—Though an insolvent debtor may prefer a creditor, though it exhausts the whole of his property, yet there can be no legal preference where the purpose of the debtor was fraudulent and the preferred creditor had knowledge thereof.—Allen v. Kane, Wash., 140 Pac. 534.

46. **Garnishments**—Demurrer.—An answer to a suit for debt, which pleads in bar a judgment in another state against defendant as garnishee, is demurrable, where it does not show that the demand sued for is identical with that adjudicated in the garnishee proceedings.—Brown v. Stogsdale, Okla., 140 Pac. 608.

47. **Gifts**—Causa Mortis.—A gift was not one causa mortis, where the donor was not in extremis, or in immediate danger of death.—In re Heiser's Estate, 147 N. Y. Supp. 557.

48.——Delivery.—Where V. executed a note to A. and B., which, with a paper asking them to accept it, was placed in an envelope and sealed, and the same was found in V.'s house after his death, there was no gift inter vivos, because of the absence of a delivery to A. and B. by V. during his lifetime.—Maris v. Adams, Tex., 166 S. W. 475.

49. **Homicide**—Evidence.—Accused, in a homicide case, could introduce evidence that the crime was committed by some other person, for the purpose of showing that he was not guilty. —Tillman v. State, Ark., 166 S. W. 582.

50. **Homestead**—Abandonment. — Where the owner of a homestead sold part of the tract and removed to another locality, his mere intention to return at some indefinite time and take up his homestead upon the unimproved quarter section which he retained will not sustain a claim of a homestead exemption.—Johnson v. Conger, Tex., 166 S. W. 405.

51. **Husband and Wife**—Separation Agreement.—Where husband and wife, who made a valid separation agreement, subsequently reassumed the marital relation, the agreement was annulled, and their marital rights must be determined by statute.—Carter v. Younger, Ark., 166 S. W. 547.

52. **Insane Person**—Voidable Conveyance.—A conveyance by one who was at the time incapable of transacting business, of her interest under a will, would be voidable.—Snowman v. Herrick, Me., 90 Atl. 479.

53. **Insurance**—Constitutional Law. — The statute providing for damages and attorney's fees for refusal to pay an insurance policy within the time specified in the statute if liability thereon be established, is constitutional.—Amarillo Nat. Life Ins. Co. v. Brown, Tex., 166 S. W. 658.

54.——Regulation.—The business of fire insurance is so far affected with a public interest as to justify legislative regulation of its rates. —German Alliance Ins. Co. v. Lewis, 34 Sup. Ct. Rep. 612.

55.—Subrogation.—A railroad company's right to the benefit of insurance on property destroyed by fire exists irrespective of negligence, and hence an insurance company which has paid a loss is not subrogated to the owner's right against the railroad company though the fire was due to negligence.—Farren v. Maine Cent. R. Co., Me., 90 Atl. 497.

56. **Judgment**—Res Judicata.—A voluntary dismissal of an action against a carrier for collecting unreasonable freight rates is no bar to a subsequent suit between the same parties to enforce a reparation order of the Interstate Commerce Commission on a finding that such rates were excessive.—Baer Bros. Mercantile Co. v. Denver & R. G. R. Co., 34 Sup. Ct. Rep. 641.

57.——Uncertainty.—A judgment for the "sum of $———, being the amount of" a replevy bond, was not void for uncertainty, if the bond was in the record and the amount thereof was fixed, under the rule that a judgment is certain which can be made certain.—Lester v. Gatewood, Tex., 166 S. W. 389.

58. **Landlord and Tenant**—Destruction of Premises.—Under a lease providing that if the building be destroyed by fire, the rent shall cease until fully repaired, etc., unless such fire was caused by the negligence of the tenant, the burden of establishing such negligence was upon the landlord.—Guernsey v. Butterick Pub. Co., 147 N. Y. Supp. 408.

59.——Renewal of Lease.—Where a lease provided that at its expiration and the expiration of each renewal term, it should be renewed for a further term, but that either party might cancel any renewal by giving notice four months before the expiration of the term, the lease was automatically renewed unless such notice was given.—Broadway Bldg Co. v. Moore Filter Co., 147 N. Y. Supp. 438.

60.——Res Ipsa Loquitur.—Mere proof that the balcony of an auditorium in a building leased by defendants, which they in turn demised to a religious society for the celebration of a festival, fell and injured a spectator will not establish defendants' liability.—Friedman v. Richman, 147 N. Y. Supp. 461.

61. **Logs and Logging**—Removal.—Though a conveyance of land reserved to grantor all of the timber thereon, which included beech trees, with the right to remove it within seven years, mast which grew on the beech trees and ripened and fell to the ground within that time belonged to the grantee and not to the owner of the timber.—Vincent v. Haycraft, Ky., 166 S. W. 613.

62.——Scaler.—The term "scaler," as used in the contract for certain logging operations, means an expert employed to determine the number of board feet and the percentage of unsound timber in logs.—Connecticut Valley Lumber Co. v. Stone, U. S. C. C. A., 212 Fed. 713.

63. **Master and Servant**—Election of Remedy. —Where the employer elects not to be bound by the Workmen's Compensation Act, an employee's action for personal injuries is governed by the general rules of law applicable in such actions, except as to the defenses of assumed risk, fellow servants and contributory negligence.—Crooks v. Tazewell Coal Co., Ill., 105 N. E. 132.

64.——Employment.—Where plaintiff was not legally bound to continue in defendant's employ, defendant's alleged promise, made in May, 1910, that he would give plaintiff a bonus equal to his salary, beginning January 1st and ending December 31, 1910, was not nudum pactum. —H. S. Kerbaugh v. Gray, U. S. C. C. A., 212 Fed. 716.

65.——Master's Promise.—Where an employee is especially engaged to work near unguarded shaft, the master's promise to guard the shaft

may be regarded as a protection to the employee until there is some express or otherwise specific change in the relation of the parties.—Odell Mfg. Co. v. Tibbetts, U. S. C. C. A., 212 Fed. 652.

66.——Respondeat Superior.—A railroad yard watchman was within the scope of his authority in following a thief to his home, and making an arrest, and the company was liable if he did this in an unlawful manner.—Scribor v. Oregon-Washington R. & Navigation Co., Ore., 140 Pac. 629.

67.——Safe Appliances.—A T-rail cutter used to cut rivets is a simple tool, and an employee versed in the use of ordinary tools may not recover for an injury by a sliver flying from the cutter.—Ohio Valley Ry. Co. v. Copley, Ky., 166 S. W. 625.

,68.——Safe Place.—A master's general obligation to provide a safe place does not apply when the character of the place changes as respects safety as the work progresses, or by reason thereof.—Dasher v. Hocking Min. Co., U. S. C. C. A., 212 Fed. 628.

69. **Mercantile Agencies**—Contract.—One who undertakes to furnish information as to the credit of individuals or corporations, is liable, in the absence of an express contract, for the negligent performance of that contract, and an agreement to fix the amount of such liability in advance does not make the contract one of insurance.—People ex rel. Daily Credit Service Corporation v. May, 147 N. Y. Supp. 487.

70. **Mines and Minerals**—Notice of Location.—Under the statute requiring the locators to post at the point of discovery a plain sign or notice, a location notice written on a piece of white paper placed on a stick and partly covered by a rock to prevent it from blowing away cannot, as a matter of law, be held insufficient.—Emerson v. Akin, Colo., 140 Pac. 481.

71. **Monopolies**—Restraint of Trade.—Agreement between dealers fixing selling price held not an unreasonable restraint of trade, where they did not control the supply and the agreed price was not excessive.—Kohart v. Skou, 147 N. Y. Supp. 509.

72. **Monopolies**—Theatrical Performances.—The production of grand opera is neither trade nor commerce, and hence restrictive covenants tending to give a monopoly of the production of grand opera are not within the Sherman Act.—Metropolitan Opera Co. v. Hammerstein, 147 N. Y. Supp. 532.

73.——Trusts.—A lessor's agreement that he would not allow any cold drink stands, shows, exhibitions, dance halls, or platforms on the land he owned within 400 yards of the leased land, or allow any use of such contiguous land antagonistic to the purpose and welfare of the lessee, held not to violate Rev. St. 1911, arts. 7796-7809, defining and prohibiting trusts, monopolies, and conspiracies against trade.—Edwards v. Old Settlers' Ass'n, Tex., 166 S. W. 423.

74. **Negligence**—Attractive Nuisance.—Where defendant permitted children to play on or about an ash pile on which hot ashes from the boilers of its plant were dumped, it was its duty to put in a guard about the pile to give warning of the danger.—Escanaba Mfg. Co. v. O'Donnell, U. S. C. C. A., 212 Fed. 648.

75.——Employment of Minor.—Plaintiff, who had no knowledge that he could not be employed as a fireman on account of his minority, and who went into defendant's railroad yard to seek employment of its master mechanic, in view of a proved custom of master mechanics to engage firemen at the yards, held rightly there.—St. Louis, I. M. & S. Ry. Co. v. Wirbel, Ark., 166 S. W. 573.

76.——Invitee.—Where a boy who has brought corn to a mill to be ground was invited by the proprietor to go into the boiler room and warm himself, the proprietor owed him a duty to use reasonable care to keep the premises in a safe condition, but was not an insurer of the boy's safety.—Branham's Adm'r v. Buckley, Ky., 166 S. W. 618.

77. **Novation**—Defined.—To constitute a novation, the creditor, debtor, and third person must all agree that the original debtor be released and the third person substituted in his stead.—L. & A. Scharff Distilling Co. v. Springfield Coal, Ice & Transfer Co., Mo., 166 S. W. 654.

78. **Partition**—Binding Agreement.—Where land was deeded jointly to two persons upon consideration that each would pay his proportionate part of the purchase price, the subsequent division of the land by such grantees in that proportion, each agreeing to pay his part of the price, which was done, was a valid partition binding upon the parties and their heirs.—Harle v. Harle, Tex., 166 S. W. 674.

79. **Partnership**—Confidential Relationship.—One partner may not profit for himself individually out of the partnership business, or out of private transactions which should have been conducted in the partnership name; but he may buy and sell real estate or other property, if the transaction is disconnected with the partnership business, and is not in competition or rivalry therewith, and if he is under no duty to conduct it for the firm.—Shrader v. Downing, Wash., 140 Pac. 558.

80.——Creditors.—Partnership assets applicable to debts of the same class should be equally distributed among creditors of the same class.—Fogg v. Tyler, Me., 90 Atl. 481.

81. **Principal and Surety**—Renewal Notes.—Where one acting as secretary of a corporation signed as surety a note of the corporation, she was not released by the execution of renewal notes by the corporation alone.—Agnew v. Mathieson, Colo., 140 Pac. 484.

82. **Reformation of Instruments**—Mistake.—A deed of real estate may be reformed so as to carry out the actual intention of the parties, where there has been a material and mutual mistake, but no fraud, though the mistake may be due to the negligence of one or both of the parties.—Carlson v. Druse, Wash., 140 Pac. 570.

83. **Removal of Causes**—Separable Controversy.—Where a person is killed in Kentucky by the negligent operation of a railroad train, the engineer and the railroad company may be joined as defendants, and if so joined in good faith a separable controversy is not presented, though no concurrent act of negligence is expressly charged.—Trivette v. Chesapeake & O. R. Co., U. S. C. C. A., 212 Fed. 641.

84. **Trusts**—Married Woman.—A married woman's sole and separate use trust can be created only for the benefit of a woman actually married or in immediate contemplation of marriage with a particular person at the creation of the trust.—Carman v. Bumpus, Pa., 90 Atl. 544.

85. **Vendor and Purchaser**—Assumption of Debt.—The assignee of a land contract is not responsible for the promises of the vendor to the purchaser, unless it contracted to become so.—South Texas Mortgage Co. v. Coe, Tex., 166 S. W. 419.

86.——Rescission.—Misrepresentation, which will justify the rescission of a contract for the sale of land must mislead the purchaser and induce him to buy on the faith thereof, and in the absence of means of information to be derived from his own observation, and must injure the party seeking to rescind.—English v. North, Ark., 166 S. W. 577.

87. **Wills**—Construction.—An absolute estate once given will not be cut down by subsequent terms of the will, unless such clearly and decisively appears to have been testator's intention.—Bacon v. Sayre, 147 N. Y. Supp. 522.

88.——Descent and Distribution.—If, without a devise or bequest, an heir would take the same estate or interest which a will purports to give him, he will take by descent, and not under the will.—Dillman v. Fulwider, Ind., 105 N. E. 124.

89.——Joint Wills.—A husband and wife may make a joint and mutual will containing reciprocal obligations.—Larrabee v. Porter, Tex., 166 S. W. 395.

90.——Perpetuities.—Where futurity is annexed to the substance of a gift by will, the vesting is suspended; but, if it relates to the time of the payment only, the legacy vests instantly.—In re Toms' Estate, 147 N. Y. Supp. 550.